

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-7019

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DEREK MARQUIS FLEMING,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. N. Carlton Tilley, Jr., Chief District Judge. (CR-91-179-G, CA-02-928-1)

Submitted: November 19, 2003

Decided: December 30, 2003

Before WILKINSON and GREGORY, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Derek Marquis Fleming, Appellant Pro Se. Paul Alexander Weinman, Assistant United States Attorney, Winston-Salem, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Derek Marquis Fleming seeks to appeal the district court's order accepting the magistrate judge's recommendation to dismiss his motion to correct a clerical error in the judgment pursuant to Fed. R. Crim. P. 36, which the district court construed as a successive motion filed under 28 U.S.C. § 2255 (2000), and dismissed for lack of jurisdiction. He also appeals from the district court's order denying his motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e). An appeal may not be taken from the final order in a post-conviction proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the record and Fleming's preliminary informal brief on appeal and conclude that Fleming has not made the requisite showing. To the extent Fleming's notice of appeal and appellate brief could be construed as a motion for authorization to file a successive § 2255

motion, we deny such authorization. See United States v. Winestock, 340 F.3d 200, 208 (4th Cir. 2003), cert. denied, ___ U.S. ___, 2003 WL 22232622 (U.S. Nov. 3, 2003) (No. 03-6548).

Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED